IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

R.S.A. No. 148 of 2006.

Judgement reserved on:

Date of decision : April 3, 2006.

Dalel Chand …….. Appellant.

Versus

Wattana ……. Respondent.

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

Whether approved for reporting? Yes

For the appellant: Mr. H.K.Bhardwaj, Advocate &
Mr.Y. Paul, Advocate.

For the respondents:

Surjit Singh J. (Oral).

Heard and gone through the record. Respondent-plaintiff filed a suit seeking partition of land, bearing Khasra No. 2655, which is assessed to land revenue. Defendant- appellant, who is a brother of the respondent- plaintiff and is recorded as joint owner, but in exclusive possession of the said land contested the suit. It was alleged that the suit was not maintainable and the court had no jurisdiction. On merits, it was stated that the plaintiff- respondent had surrendered his share in the aforesaid land in favour of the

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Whether reporters of local Papers may be allowed to see the judgment? yes

appellant- defendant, in lieu of the latter having given his house to him and thus there was exchange of respondent- plaintiff's share in the suit land with appellant- defendant's house situate in Abadi. Both the courts below have rejected the plea of exchange and held that the plaintiff being the joint owner of the suit property, is entitled to partition.

The only point that has been raised before me is that the suit land being assessed to land revenue, suit for its partition was barred, as the plaintiff- respondent had sought partition of only a part of the joint property assessed to land revenue.

I have gone through the record as also the copy of the written statement available with the learned counsel for the appellant- defendant. The appellant- defendant nowhere took the plea that the suit was bad for partial partition or that the parties were joint owners of some other property assessed to land revenue, in addition to the suit land. He submits that evidence on record, like the copies of jamabandies and oral evidence indicates that the parties are joint owners of some other property also which is assessed to land revenue also. This submission has been noticed only to be rejected. Pleadings are the foundation of any case and foundation has not been laid that the parties are joint owner of some other property also and hence partition in respect of a portion of the joint property could not have been sought. The jamabandies and other oral evidence qua this submission are required to be simply ignored.

In view of above discussion, I do not think that any question of law, much-less a substantial question of law arises. Hence the appeal is dismissed.

CMP No. 212 of 2006.

Dismissed, in view of the dismissal of the main appeal.

April 3, 2006. **(Surjit Singh),**
(Hem) **Judge.**